



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 230130-0032]**

**RIN 0648-BL89**

**Fisheries of the Caribbean, Gulf of Mexico, and South  
Atlantic; Reef Fish Resources of the Gulf of Mexico;  
Temporary Measures to Reduce Overfishing of Gag**

**AGENCY:** National Marine Fisheries Service (NMFS),  
National Oceanic and Atmospheric Administration  
(NOAA), Commerce.

**ACTION:** Proposed temporary rule; request for comments.

**SUMMARY:** This proposed temporary rule would implement interim measures to reduce overfishing of gag in Federal waters of the Gulf of Mexico (Gulf). This temporary rule would reduce the 2023 commercial and recreational sector harvest levels for gag and would change the 2023 recreational fishing season for gag in Federal waters of the Gulf. This proposed temporary rule would be effective for 180 days, but NMFS may extend the interim measures for a maximum of an additional 186 days. The purpose of this proposed temporary rule is to reduce overfishing of gag while the long-term management measures are developed.

**DATES:** Written comments must be received by *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on the proposed temporary rule identified by "NOAA-NMFS-2022-0136" by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter "NOAA-NMFS-2022-0136" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Dan Luers, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information, e.g., name and address, confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept

anonymous comments - enter "N/A" in required fields if you wish to remain anonymous.

Electronic copies of the environmental assessment (EA) supporting these proposed interim measures may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/interim-action-reduce-overfishing-gag-gulf-mexico>. The EA includes a regulatory impact review and a Regulatory Flexibility Act (RFA) analysis.

**FOR FURTHER INFORMATION CONTACT:** Dan Luers, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: [daniel.luers@noaa.gov](mailto:daniel.luers@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) and includes gag and 30 other managed reef fish species. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

### **Background**

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the

optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights described in this proposed temporary rule are in gutted weight.

Gulf gag is harvested by the commercial and recreational sectors, with 39 percent of the total annual catch limit (ACL) allocated to the commercial sector and 61 percent allocated to the recreational sector. Commercial harvest of gag is managed under the individual fishing quota program for groupers and tilefishes (GT-IFQ program). NMFS constrains commercial landings of gag to the commercial quota, which is the harvest level reduced from the commercial ACL. Recreational harvest of gag is currently allowed from June 1 each year until NMFS projects that recreational landings reach the recreational ACL. If the recreational landings exceed its ACL, recreational harvest is constrained the following year to the recreational annual catch target (ACT).

The current stock ACL for gag is 3.12 million lb (1.415 million kg). The current gag commercial ACL and commercial quota are 1.217 million lb (0.552 million

kg) and 939,000 lb (426,000 kg), respectively. The current recreational ACL and recreational ACT for gag are, 1.903 million lb (0.863 million kg) and 1.708 million lb (0.775 million kg), respectively. The current harvest levels are based on the results of the 2016 Southeast Data, Assessment, and Review (SEDAR) stock assessment process (SEDAR 33 Update), which indicated that gag was not subject to overfishing and was not overfished. The SEDAR 33 Update included recreational catch and effort data generated by the Marine Recreational Information Program (MRIP) using the Coastal Household Telephone Survey (CHTS).

The gag stock was assessed again in 2021 in SEDAR 72, and was determined to be overfished and undergoing overfishing. Several data inputs used in the SEDAR 33 Update were modified in SEDAR 72. Most notably was the change in recreational catch and effort data from MRIP-CHTS to the MRIP-Fishing Effort Survey (FES). MRIP began transitioning from the CHTS to the FES in 2015 and the FES replaced the CHTS in 2018. MRIP-FES generally estimates higher recreational effort, and thus higher recreational landings, than MRIP-CHTS.

SEDAR 72 also accounted for observations of red tide mortality, since gag is vulnerable to red tide events and was negatively affected by these disturbances in 2005, 2014, 2018, and projected for

2021 directly within the stock assessment model. Lastly, modeling changes were made in SEDAR 72 to better quantify commercial discards by taking into account the potential misidentification between black grouper and gag, which are similar looking species, and to improve size estimates of gag retained by commercial and for-hire fishermen, and private anglers.

In November 2021, the Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 72 and found it to be the best scientific information available for informing fisheries management. On January 26, 2022, NMFS notified the Council that gag was overfished and undergoing overfishing, and that measures to rebuild the stock and end overfishing must be implemented within 2 years, *i.e.*, by January 26, 2024. In response, the Council began work on Amendment 56 to the FMP. However, because the management measures in Amendment 56 will not be effective until the 2024 fishing year, the Council requested that NMFS implement interim measures to reduce overfishing of gag during the 2023 fishing year. Specifically, the Council requested that NMFS implement reduced catch levels for gag using the current sector allocation, and that NMFS move the start of the gag recreational fishing season.

The reduced catch limits requested by the Council are based on a rebuilding time that is equal to twice the time necessary to rebuild the stock if fishing mortality was reduced to zero, which is one of the rebuilding times considered in Amendment 56. The catch limits would be a stock ACL of 661,901 lb (300,233 kg), commercial ACL and quota of 258,000 lb (117,027 kg) and 199,000 lb (90,265 kg), respectively, and recreational ACL and ACT of 403,759 lb (183,142 kg) and 362,374 lb (164,370 kg), respectively. The proposed recreational catch limits are not directly comparable to the current recreational catch limits because of the change from MRIP-CHTS to MRIP-FES to estimate recreational landings. However, the proposed recreational catch limits would result in a substantial reduction in the length of the recreational season.

Although the Council requested a commercial ACL of 258,142 lb (117,091 kg) and commercial quota of 199,157 lb (90,336 kg) for 2023, the analyses conducted by NMFS supporting the implementation of interim measures use a commercial ACL and quota rounded to the nearest thousand pounds, as noted above. NMFS used the rounded numbers because they are consistent with the numerical format of the current gag commercial catch limits and the Council did not

consider whether this practice should be continued for the purpose of the interim commercial catch limits. NMFS expects the Council to clearly articulate in Amendment 56 whether the commercial catch limits for gag should continue to be rounded to the nearest thousand pounds.

In addition to the reduction in the gag catch limits, the Council requested that NMFS move the start of the gag recreational fishing season for the 2023 fishing year from June 1 to September 1. The Council also requested the season close on November 10, instead of remaining open through December 31, as it is currently. Therefore, the recreational fishing season would be open from September 1 through November 9, 2023, unless NMFS projects that the recreational ACL will be reached sooner and closes the recreational sector as required by the accountability measures specified in 50 CFR 622.41(d)(2). The Council and NMFS expect that the proposed change to the recreational season would maximize the number of recreational fishing days for gag. If the opening date for the recreational season remains June 1, 2023, NMFS projects that recreational landings of gag would reach the proposed recreational ACL in only 16 days.

The Council did not recommend interim modifications to the commercial sector's IFQ multi-use



provision for gag and red grouper. Therefore, the gag and red grouper multi-use allocation would be available as specified in 50 CFR 622.22(a)(5).

### **Management Measures Contained in This Proposed**

#### **Temporary Rule**

During the effectiveness of this proposed temporary rule in 2023, the total ACL for gag would be 661,901 lb (300,233 kg). This rule would also specify the commercial and recreational sector ACLs and component commercial quotas using the existing sector allocations of the total ACL of 39 percent commercial and 61 percent recreational. The commercial ACL and commercial quota would be 258,000 lb (117,027 kg) and 199,000 lb (90,265 kg), respectively. The recreational ACL would be 403,759 lb (183,142 kg), and the recreational ACT would be 362,374 lb (164,370 kg). In addition, this proposed temporary rule would change the 2023 recreational fishing season to September 1 until November 10 from the current season of June 1 through December 31. NMFS would shorten the 2023 recreational season length through the current accountability measure of an in-season closure if NMFS projects that recreational landings will meet or exceed the recreational ACL prior to the proposed November 10 closure date. Because the commercial sector relies on the GT-IFQ program that distributes

commercial quota to shareholders for the entire fishing year, no change to the commercial fishing season would occur under this proposed temporary rule.

The proposed temporary reductions in the allowable harvest of gag would result in reduced allowable harvest for both the commercial and recreational sectors and a reduced recreational fishing season. The reduced harvest levels and shortened recreational fishing season would likely result in short-term adverse socio-economic effects. However, the temporary ACLs, commercial quota, and recreational ACT are expected to minimize future adverse socio-economic effects by potentially decreasing further reductions in the allowable harvest levels required to end overfishing of gag through Amendment 56. The temporary harvest levels proposed in this temporary rule would also provide biological benefits to the gag stock by reducing the current levels of fishing mortality.

#### **Future Action**

NMFS has determined that this proposed temporary rule is necessary to reduce overfishing of gag. If NMFS issues a final temporary rule, it would be effective for not more than 180 days after the date of publication in the **Federal Register**, as authorized by section 305(c) of the Magnuson-Stevens Act. The final

temporary rule could be extended if NMFS publishes a temporary rule extension in the **Federal Register** for up to an additional 186 days, provided that the public has had an opportunity to comment on the proposed interim measures. At this time, NMFS expects to extend the temporary rule after the 180-day period. If NMFS does not extend the proposed interim measures, the total and sector ACLs for gag, as well as the commercial sector quota would revert to the current limits after 180 days.

#### **Classification**

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The NMFS Assistant Administrator has determined that this proposed temporary rule is consistent with the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed temporary rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this proposed temporary rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed temporary rule. This proposed temporary rule contains

no information collection requirements under the Paperwork Reduction Act of 1995.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed temporary rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed temporary rule, if adopted, would have on small entities. A description of this proposed temporary rule, why it is being considered, and the purposes of this proposed temporary rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The objective of this proposed temporary rule is to use the best scientific information available to reduce overfishing of gag while a rebuilding plan is developed, consistent with the authority under the Magnuson-Stevens Act. All monetary estimates in the following analysis are in 2019 dollars.

This proposed temporary rule would revise the stock ACL, sector ACLs, commercial quota, and recreational ACT for gag based on the "TMin\*2" rebuilding scenario, which is twice the minimum time for the stock to rebuild with zero fishing mortality and is an alternative under consideration in Amendment

56. Given the current allocation of the stock ACL of 39 percent to the commercial sector and 61 percent to the recreational sector, the current stock ACL, commercial ACL, recreational ACL, commercial quota, and recreational ACT are 3.12 million lb (1.415 million kg), 1.217 million lb (0.552 million kg), 1.903 million lb (0.863 million kg), 939,000 lb (426,000 kg), and 1.708 million lb (0.775 million kg), respectively. The recreational portion of the current stock ACL, the recreational ACL, and the recreational ACT are based on MRIP-CHTS data. This proposed temporary rule would retain the current sector allocation percentages, but would reduce the stock ACL, commercial ACL, recreational ACL, commercial quota and recreational ACT to 661,901 lb (300,233 kg), 258,000 lb (117,027 kg), 403,759 lb (183,142 kg), 199,000 lb (90,265 kg), and 362,374 lb (164,370 kg), respectively. The recreational portion of the revised stock ACL, the recreational ACL, and the recreational ACT are based on MRIP-FES data. This proposed temporary rule would also change the recreational season start date from June 1 to September 1, and close the season on November 10 unless when the recreational ACL is projected to be met sooner. As a result, this proposed temporary rule is expected to regulate commercial fishing businesses that possess

shares of gag in the GT-IFQ program and for-hire fishing businesses that target gag.

The gag commercial quota is allocated annually based on the percentage of gag shares in each IFQ account. For example, if an account possesses 1 percent of the gag shares and the commercial quota is 1 million lb (0.45 million kg), then that account would receive 10,000 lb (4,536 kg) of commercial gag quota. Although it is common for a single IFQ account with gag shares to be held by a single business, some businesses have multiple IFQ accounts with gag shares. As of July 8, 2021, 506 IFQ accounts held gag shares. These accounts and gag shares were owned by 455 businesses. Thus, it is assumed this proposed temporary rule would regulate 455 commercial fishing businesses.

A valid charter vessel/headboat permit for Gulf reef fish is required to legally harvest gag on a recreational for-hire fishing trip. NMFS does not possess complete ownership data regarding businesses that hold a charter vessel/headboat permit for Gulf reef fish, and thus potentially harvest gag. Therefore, it is not currently feasible to accurately determine affiliations between vessels and the businesses that own them. As a result, for purposes of this analysis, it is assumed each for-hire vessel is

independently owned by a single business, which is expected to result in an overestimate of the actual number of for-hire fishing businesses regulated by this proposed temporary rule.

NMFS also does not have data indicating how many for-hire vessels actually harvest gag in a given year. However, in 2020, there were 1,289 vessels with valid charter vessel/headboat permits for Gulf reef fish. Further, gag is only targeted and almost entirely harvested in waters off the west coast of Florida. Of the 1,289 federally permitted vessels, 803 were homeported in Florida. Of these permitted vessels, 62 are primarily used for commercial fishing rather than for-hire fishing purposes, and thus are not considered for-hire fishing businesses. In addition, 46 of these permitted vessels are considered headboats, which are considered for-hire fishing businesses. However, headboats take a relatively large, diverse set of anglers to harvest a diverse range of species on a trip, and therefore do not typically target a particular species exclusively. Therefore, it is assumed that no headboat trips would be canceled, and thus no headboats would be directly affected as a result of this proposed regulatory action. However, charter vessels often target gag. Of the 803 vessels with a valid charter vessel/headboat permit for Gulf

reef fish that are homeported in Florida, 695 vessels are charter vessels. A recent study reported that 76 percent of charter vessels with a valid charter vessel/headboat permit in the Gulf were active in 2017, *i.e.*, 24 percent were not fishing. A charter vessel would only be directly affected by this proposed temporary rule if it used to go fishing. Given this information, NMFS' best estimate of the number of charter vessels that are likely to harvest gag in a given year is 528, and thus this proposed temporary rule is estimated to regulate 528 for-hire fishing businesses.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts (revenue) are not in excess of \$11 million for all of its affiliated operations worldwide. NMFS does not collect revenue data specific to commercial fishing businesses that have IFQ accounts; rather, revenue data are collected for commercial fishing vessels in general. It is not possible to assign



revenues earned by commercial fishing vessels back to specific IFQ accounts and the businesses that possess them because quota is often transferred across many IFQ accounts before it is used by the business on a vessel for harvesting purposes, and specific units of quota cannot be tracked. However, from 2016 through 2020, the maximum annual gross revenue earned by a single vessel during this time was about \$1.73 million in 2016. The average gross revenue per vessel was about \$108,000 in that year. By 2020, the maximum and average gross revenue per vessel had decreased to about \$730,000 and \$79,700, respectively. Based on this information, all commercial fishing businesses regulated by this proposed temporary rule are determined to be small entities for the purpose of this analysis.

For other industries, the Small Business Administration has established size standards for all major industry sectors in the U.S., including for-hire businesses (North American Industry Classification System (NAICS) code 487210). A business primarily involved in for-hire fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$12.5 million for all its affiliated

operations worldwide. The maximum annual gross revenue for a single headboat in the Gulf was about \$1.38 million in 2017. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels, reflecting the fact that businesses that own charter vessels are typically smaller than businesses that own headboats. Based on this information, all for-hire fishing businesses regulated by this proposed temporary rule are determined to be small businesses for the purpose of this analysis.

If implemented, NMFS expects this proposed temporary rule to regulate 455 of the 536 businesses with IFQ accounts, or approximately 85 percent of those commercial fishing businesses. Further, NMFS expects this proposed temporary rule would regulate 528 of the 1,227 for-hire fishing businesses with valid charter vessel/headboat permits for Gulf reef fish, or approximately 43 percent of those for-hire fishing businesses. NMFS has determined that, for the purpose of this analysis, all regulated commercial and for-hire fishing businesses are small entities. Based on this information, NMFS expects the proposed temporary rule to affect a substantial number of small entities.

Because revenue and cost data are not collected for the commercial fishing businesses that are expected to be regulated by this proposed temporary rule, direct estimates of their economic profits are not available. However, economic theory suggests that annual allocation (quota) prices should reflect expected annual economic profits, which allows economic profits to be estimated indirectly. Further, the 455 businesses with gag shares also own shares in the other IFQ share categories and thus are expected to earn profits from their ownership of these shares as well, *i.e.*, red snapper, red grouper, shallow-water grouper, deep-water grouper, and tilefish.

However, economic profits will only be realized if the allocated quota is used for harvesting purposes. For example, practically all of the commercial red snapper quota has been used for harvesting in recent years, and so it is assumed that all of that quota will be harvested in the foreseeable future. Important management changes have occurred for red grouper, which partly resulted in 96 percent of the commercial quota being harvested in 2021. Thus, this analysis also assumes that all of the red grouper quota will be harvested in the future as well. However, based on 2017-2021 data, only 82 percent of the deep-water grouper quota, 38 percent of the

shallow-water grouper quota, and 73 percent of the tilefish quota have been harvested, and that is expected to continue in the foreseeable future. For gag, the quota utilization rate from 2017-2021 was approximately 52 percent. Given these quota utilization rates in combination with average annual allocation prices from 2017-2021 and annual commercial quotas in 2021, the total expected economic profits for businesses with gag shares are estimated to be at least \$29.4 million at the present time. This estimate does not account for any economic profits that may accrue to businesses with gag shares that also own commercial fishing vessels that harvest non-IFQ species. Such profits are likely to be small because harvest of IFQ species accounts for around 84 percent of commercial IFQ vessels' annual revenue and economic profits from the harvest of non-IFQ species tend to be smaller than those from IFQ species. Given that there are 455 businesses with gag shares, the average annual expected economic profit per commercial fishing business is at least \$64,620.

However, most of these economic profits (82 percent) are the result of owning red snapper shares. Only approximately \$502,930 (or 1.7 percent) of their expected economic profits is due to the ownership of gag shares. This proposed temporary rule is only

expected to affect economic profits from the ownership of gag shares, specifically because of the proposed action to reduce the gag commercial ACL from 1.217 million lb (0.552 million kg) to 258,000 lb (117,027 kg) and the gag commercial quota from 939,000 lb (426,000 kg) to 199,000 lb (90,265 kg). Average annual commercial landings of gag from 2017-2021 were 492,401 lb (223,349 kg). Because average annual landings exceed the proposed commercial quota, it is assumed all of the proposed commercial quota will be harvested in the future. Further, the expected reduction in annual commercial landings is 293,401 lb (133,084 kg). The reduction in commercial landings is expected to increase the average ex-vessel price of gag from \$6.10 per lb to \$7.54 per lb, thereby partially offsetting the adverse effects of the expected landings reduction. Thus, the expected reduction in annual ex-vessel revenue for gag is approximately \$1.5 million. Given an average annual allocation price of \$1.03 per lb for gag from 2017-2021, the expected reduction in commercial landings of gag is expected to reduce economic profits to these commercial fishing businesses by about \$302,200, or by approximately \$660 per commercial fishing business. Thus, economic profit is expected to be reduced by no more than 1 percent on average per commercial fishing business.

Based on the most recent information available, average annual profit is \$27,948 per charter vessel. The action that revises the stock ACL changes the gag recreational ACL from 1.903 million lb (0.86 million kg) in MRIP-CHTS units to 403,759 lb (183,142 kg) in MRIP-FES units. The terms "MRIP-CHTS units" and "MRIP-FES units" signify that although the current and proposed recreational ACLs are expressed in pounds, they are in different scales and not directly comparable. However, average recreational landings from 2017-2021 were approximately 2.538 million lb (1.151 million kg) in MRIP-FES units. Given that average recreational landings have been considerably greater than the proposed recreational ACL, all of the proposed recreational ACL is expected to be harvested in the future. The recreational ACL reduction is expected to reduce the recreational season length from 214 days to 16 days, which in turn is expected to reduce the number of trips targeting gag on charter vessels by 26,542 angler trips. Net Cash Flow per Angler Trip (CFpA) is the best available estimate of economic profit per angler trip by charter vessels. CFpA on charter vessels is estimated to be \$149 per angler trip. Thus, NMFS expects the estimated reduction in charter vessel economic profits from this proposed action to be \$3.955 million. The reduction in

charter vessel economic profits is estimated to be \$7,490 per vessel, or almost 27 percent on average per for-hire fishing business.

The proposed action that changes the recreational season would increase the number of target trips for gag by charter vessels during this period over the number of target trips in previous years by 2,159 trips, thereby partially mitigating the reduction in target trips due to the proposed recreational ACL reduction. Assuming the CFpA on charter vessels is \$149 per angler trip, this proposed action is expected to increase economic profits for charter vessels by \$321,733, or by \$609 per charter vessel. Thus, economic profits are expected to be increased by around 2.2 percent on average per for-hire fishing business.

Based on the above, the total reduction in economic profits for charter vessels from this proposed temporary rule is expected to be about \$3.634 million, or approximately \$6,882 per charter vessel. Thus, economic profits are expected to be reduced by approximately 24.6 percent on average per for-hire fishing business.

Three alternatives, including the status quo, were considered for the proposed action to revise the current gag stock ACL, commercial ACL, recreational

ACL, commercial quota, and recreational ACT of 3.12 million lb (1.415 million kg), 1.217 million lb (0.552 million kg), 1.903 million lb (0.863 million kg), 939,000 lb (426,000 kg), and 1.708 million lb (0.775 million kg) based on MRIP-CHTS data. The proposed action would revise the same catch levels for gag to 661,901 lb (300,233 kg), 258,000 lb (117,027 kg), 403,759 lb (183,142 kg), 199,000 lb (90,265 kg), and 362,374 lb (164,370 kg), respectively, based on the TMin\*2 rebuilding scenario and MRIP-FES data. Similar to the proposed action, the status quo alternative would have retained the current allocation of the stock ACL of 39 percent to the commercial sector and 61 percent to the recreational sector. But, it also would have maintained current the stock ACL, commercial ACL, recreational ACL, commercial quota, and recreational ACT stated earlier based on MRIP-CHTS data. The status quo alternative was not selected because it would not reduce overfishing of gag while a rebuilding plan is being developed, contrary to the purpose of this proposed temporary rule.

A second alternative would have decreased the allocation percentage of the gag stock ACL to the commercial sector from 39 percent to 20.5 percent and increased the allocation percentage to the recreational sector from 61 percent to 79.5 percent.



Further, based on the TMin\*2 rebuilding scenario and MRIP-FES data, this alternative would have revised the gag stock ACL, commercial ACL, recreational ACL, commercial quota, and recreational ACT from 3.12 million lb (1.415 million kg), 1.217 million lb (0.552 million kg), 1.903 million lb (0.863 million kg), 939,000 lb (426,000 kg), and 1.708 million lb (0.775 million kg) based on MRIP-CHTS data to 611,578 lb (277,407 kg), 125,000 lb (56,699 kg), 486,204 lb (220,538 kg), 98,000 lb (44,452kg), and 436,368 lb (197,933 kg). Like the proposed preferred action, this alternative would have reduced overfishing while a rebuilding plan is being developed. However, since this temporary rule and an extension cannot in combination be in effect for more than 366 days, this alternative was not selected because the Council advised NMFS that it would prefer to address sector allocations for gag on a longer-term basis through an amendment to the FMP.

A third alternative would have decreased the allocation percentage of the gag stock ACL to the commercial sector from 39 percent to 18 percent and increased the allocation percentage to the recreational sector from 61 percent to 82 percent. Further, based on the TMin\*2 rebuilding scenario and MRIP-FES data, this alternative would have revised the

gag stock ACL, commercial ACL, recreational ACL, commercial quota and recreational ACT from 3.12 million lb (1.42 million kg), 1.217 million lb (0.55 million kg), 1.903 million lb (0.86 million kg), 939,000 lb (426,000 kg), and 1.708 million lb (0.78 million kg) based on MRIP-CHTS data to 605,165 lb (274,745 kg), 109,000 lb (49,486 kg), 496,235 lb (225,291 kg), 84,000 lb (38,136 kg), and 445,370 lb (202,198 kg). Similar to the second alternative, this alternative would have reduced overfishing while a rebuilding plan is being developed. However, since this temporary rule and an extension cannot be in effect for more than 366 days, this alternative was not selected because the Council advised NMFS that it would prefer to address sector allocations for gag on a longer-term basis through an amendment to the FMP.

Three alternatives, including the status quo, were considered for the proposed action to change the recreational start date from June 1 to September 1, and close the season on November 10, unless NMFS projects the recreational ACL will be met sooner. The status quo alternative would have maintained the recreational season start date of June 1, which was expected to result in a recreational season length of only 16 days compared to 70 days under the proposed action. This alternative was not selected as it would

not mitigate the adverse effects from the proposed recreational ACL reduction and thereby would have resulted in greater adverse effects on small for-hire fishing businesses.

The second alternative would have changed the recreational season start date from June 1 to October 1, which would have resulted in a recreational season length of 55 days compared to 70 days under the proposed action. Although the second alternative would have mitigated some of the adverse effects from the proposed recreational ACL reduction, this alternative was not selected because, given the shorter season length compared to the proposed action, it would not allow for-hire fishing businesses and recreational fishermen as much flexibility in planning target trips for gag, which is particularly desirable during hurricane season, which occurs from June 1 through November 30 each year. Further, unlike the proposed action, this alternative does not have a fixed closure date, which would increase the probability of exceeding the recreational ACL relative to the proposed action.

The third alternative would have changed the recreational season start date from June 1 to November 1, which would have resulted in a recreational season length of 29 days compared to 70 days under the

proposed action. Although the third alternative would have mitigated some of the adverse effects from the proposed recreational ACL reduction, this alternative was not selected because it would not have mitigated those adverse effects as much as the proposed action, thereby causing relatively greater adverse effects on small for-hire fishing businesses. Further, given the shorter season length compared to the proposed action, it would not allow for-hire fishing businesses and recreational fishermen as much flexibility in planning target trips for gag, which is particularly desirable during hurricane season. Also, similar to the second alternative, this alternative does not have a fixed closure date, which would increase the probability of exceeding the recreational ACL relative to the proposed action.

**List of Subjects in 50 CFR Part 622**

Annual catch limit, Fisheries, Fishing, Gag, Gulf of Mexico.

Dated: January 30, 2023.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO,  
AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 et seq.

2. In § 622.34:

- a. Suspend paragraph (e); and
- b. Add paragraph (i).

The addition reads as follows:

**§ 622.34 Seasonal and area closures designed to  
protect Gulf reef fish.**

\* \* \* \* \*

(i) *Seasonal closure of the recreational sector for gag.* The recreational harvest of gag in or from the Gulf EEZ is closed from January 1 through August 31 and from November 10 through December 31. During the closure, the bag and possession limits for gag harvested in or from the Gulf EEZ are zero.

3. In § 622.39:

- a. Suspend paragraph (a) (1) (iii) (B); and

b. Add paragraph (a) (1) (iii) (D) .

The addition reads as follows:

**§ 622.39 Quotas .**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(D) *Gag*. Shallow-water groupers (SWG) have a separate quota for gag, among the other species described in the introductory text of paragraph (a) (1) (iii) of this section, and as specified in this paragraph (a) (1) (iii) (D) . This quota is specified in gutted weight, that is, eviscerated but otherwise whole. The commercial quota for gag is 199,000 lb (90,265 kg) .

\* \* \* \* \*

4. In § 622.41, revise paragraphs (d) (1) and (d) (2) (iv) to read as follows:

**§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs) .**

\* \* \* \* \*

(d) \* \* \*

(1) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial gag. The commercial ACL in gutted weight is 258,000 lb (117,027

kg) .

(2) \* \* \*

(iv) The recreational ACL in gutted weight is 403,759 lb (183,142 kg). The recreational ACT in gutted weight is 362,374 lb (164,370 kg) .

\* \* \* \* \*

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